

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Establish
Policies and Cost Recovery Mechanisms for
Generation Procurement and Renewable
Resource Development.

Rulemaking 01-10-024
(Filed October 25, 2001)

**ADMINISTRATIVE LAW JUDGE'S RULING
ISSUING WORKPLAN AND COLLABORATION GUIDELINES**

Workplan

Attached to this Ruling is a Workplan, developed collaboratively by the staff of the California Public Utilities Commission (CPUC) and the California Energy Commission (CEC), consistent with Decision (D.) 02-12-074. The Workplan identifies issues, agency responsibilities, and processes for meeting the requirements of Senate Bill (SB) 1078. Parties provided input to the Workplan via comments and reply comments, filed on January 6 and 13, 2003. Parties may also provide written comments on the Workplan itself no later than February 10, 2003. In addition, the Workplan will be discussed at the Pre-Hearing Conference (PHC) scheduled for February 18, 2003.¹

The Workplan as presented today is not cast in stone. Given the short time available for considering and integrating party comments, the opportunity for

¹ The PHC was originally scheduled for February 17th, but was subsequently rescheduled.

future input, and the complex nature of this proceeding, the attached Workplan neither can nor should be considered final, but rather a living document that can be further refined. At the same time, however, the expedited schedule for this proceeding requires that the vast majority of this refinement must occur quickly. Accordingly, parties should provide any feedback regarding the Workplan in written comments by February 10, so that the discussion at the PHC can be well informed. Absent unusual and compelling circumstances, parties should not be raising new issues or concerns regarding the Workplan at the PHC.

Collaboration Guidelines

Under SB 1078, the CEC and CPUC are to work collaboratively. This is a relatively unfamiliar process for the two agencies, and accordingly no existing guidelines are in place for integrating of procedures. Putting some basic guidelines in place will benefit the process and all parties.

First, the CEC has designated certain of its staff as RPS Collaborative Staff. They are identified by name in the attached Workplan. Should the CEC wish to add or subtract Collaborative Staff members, it should send an electronic notice to all parties with the name or names of the members. Any such proposed changes are automatically effective five days after the notice is sent.

As a practical matter, the CEC's RPS Collaborative Staff will be functioning like the Commission's own advisory staff for purposes of this proceeding. As part of the collaborative process, the RPS Collaborative Staff may become aware of confidential or privileged information. The Commission has not waived any confidentiality or privilege by such disclosure, and (just like the Commission's advisory staff) the RPS Collaborative Staff should maintain all of the Commission's applicable privileges and confidential designations. To facilitate this requirement, all CPUC documents containing confidential or privileged

information that may be shared with the RPS Collaborative Staff shall be clearly marked or labeled to indicate their confidential or privileged nature, to the extent possible. In addition, the CEC shall ensure that these confidential or privileged documents are exempt from public disclosure under its regulations for confidential designation (20 CCR section 2501, et seq.).

Again, similar to the Commission's advisory staff, the RPS Collaborative Staff are neither decision makers nor parties to this proceeding, and accordingly are not subject to the Commission's *ex parte* rules. The RPS Collaborative Staff are free to communicate with decision makers at both the CPUC and CEC, and with parties to the proceeding.

This issue is somewhat complicated by the fact that the CEC is a party to this and other Commission proceedings. The CEC in its role as a litigant should not gain an unfair advantage by obtaining inside information that is unavailable to other litigants. While the RPS Collaborative Staff is free to communicate with decision makers and CEC staff, RPS Collaborative Staff cannot provide CEC litigation staff (or any other party) with information obtained from the collaborative process that could possibly provide a litigation advantage. Also, members of the RPS Collaborative Staff cannot litigate or assist in litigation before the Commission on issues closely related to the issues on which they are working as RPS Collaborative Staff.² In essence, members of the RPS Collaborative Staff can only wear one hat when it comes to the issues that are addressed in this proceeding. Notwithstanding this limitation, CEC RPS Collaborative Staff may continue to participate in the Procurement Review

² The meaning of "closely related" is fact-specific, and will be determined on a case-by-case basis.

Groups (PRG) established in this proceeding pursuant to the rules and conditions of participation established for the PRG process. In addition, CEC RPS Collaborative Staff may assist with CEC litigation before the CPUC in the ongoing transmission proceeding (I.00-11-001) on issues that they are not working on and that have not been addressed in the RPS Collaborative process in this proceeding.

The obligations to maintain the Commission's privileges and to avoid providing an unfair advantage to a party in a Commission proceeding do not terminate with the end of this proceeding or the end of an individual member's tenure as RPS Collaborative Staff. Accordingly, the above restrictions continue to apply even after the conclusion of this proceeding, and to former members of the RPS Collaborative Staff. To safeguard against the inadvertent disclosure of confidential and privileged information, CEC members of the RPS Collaborative Staff will return or destroy all confidential or privileged records they have received from the CPUC as part of the collaborative process at the conclusion of this proceeding, or upon their removal from the RPS Collaborative Staff, whichever occurs first.

The passage of time, however, will eventually make the information obtained in the collaborative process less significant, although privileges do not generally expire. If former CEC members of the RPS Collaborative Staff desire to disclose privileged or confidential information obtained as part of the collaborative process after the conclusion of this proceeding, a written request must be submitted to the Commission's General Counsel to obtain authorization for such disclosure. The limitation on RPS Collaborative Staff litigating or

assisting in litigation before the Commission expires two years after the conclusion of this proceeding.³

Members of the RPS Collaborative Staff may contact the Commission's Legal Division with any questions relating to these guidelines.

IT IS RULED that:

1. Parties may submit comments on the attached Workplan no later than 5 pm on Monday, February 10, 2003. Service should be by e-mail on all parties who have provided an e-mail address, and by mail on all parties without an e-mail address. Comments should be e-mailed to ALJ Peter V. Allen at pva@cpuc.ca.gov.
2. The Workplan will be discussed at the PHC scheduled for February 18, 2003.
3. The CEC may designate specific members of its staff to be RPS Collaborative Staff by the process described above.
4. CEC members of the RPS Collaborative Staff shall maintain the Commission's privileges and confidential designations, as described above.
5. The Commission does not waive any privileges by sharing information with RPS Collaborative Staff.
6. RPS Collaborative Staff are neither parties nor decision makers for purposes of the Commission's *ex parte* rules.

³ Prior to the end of the two-year period, RPS Collaborative Staff may seek relief from this restriction by filing and serving a motion in this proceeding (if still open) and the proceeding in which they wish to participate. In ruling on such a motion, the criteria is to be one of fairness to other parties in the applicable proceeding. If the motion is denied on the basis that the CEC staff possess "inside" information, that staff may participate as appropriate as collaborative staff in the applicable proceeding.

7. RPS Collaborative Staff shall not provide information obtained in the collaborative process to any litigant in any Commission proceeding on issues closely related to the issues addressed in this proceeding, as described above.

Dated February 3, 2003, at San Francisco, California.

/s/ PETER V. ALLEN
Peter V. Allen
Administrative Law Judge

Attachment

WORKPLAN CPUC-CEC RPS Collaboration

This workplan presents CPUC and CEC staff recommendations regarding collaborative implementation of the state's new Renewable Portfolio Standard Program (RPS)¹. These findings were developed through regular collaborative staff meetings beginning in late October 2002, and reflect an initial consideration of party comments on collaborative structure and process. The results of this effort are described below, and include:

- I. An overview of the RPS requirements, including the implementation responsibility of the two agencies;
- II. Collaborative issues and proposed process;
- III. A proposed schedule and work product.

I. OVERVIEW OF THE RPS

California's Renewable Portfolio Standard (RPS) requires retail sellers of electricity to increase the renewable content of their energy deliveries by one percent per year, provided certain conditions are met, over a baseline level determined by the CPUC. Annual incremental procurement continues until renewable energy comprises 20 percent of the IOU's energy portfolio, a target that must be achieved by December 31, 2017.

The RPS statutes outline a disciplined approach to investment in new renewable projects. The CPUC and CEC are to make a number of determinations on RPS rules within a specified timeframe. The CEC is directed to prepare a renewable resource development plan for the state by the end of 2003, and the CPUC is directed concurrently to study how to connect renewable resources to the transmission grid. At the conclusion of these concurrent studies, a structured approach to making the necessary incremental investments in new and repowered renewable projects will be

¹ Statutory authority for the California Renewable Portfolio Standard Program is contained in Public Utilities Code Sections 387, 390.1, and Article 16 commencing with Section 399.11; related statutory authority governing the CEC's Renewable Energy Program is contained in Public Resources Code Sections 25620, 25620.1, 25620.2, 25620.3, 25620.5, 25620.7, 25620.8, 25648, 25648.4, 25684, and 25620.10, and in Public Utilities Code Sections 381, 383.5, 394.25, 445, 353.2, 383.6, and 2826.5.

apparent, and the stock of existing facilities with expiring contracts will be known. An orderly process can then be undertaken to both build and connect renewable energy resources.

Utility Procurement of Renewables²

Once the CPUC has made the necessary findings, the RPS procurement process begins with the IOU submitting a renewable procurement plan to the CPUC describing how annual procurement targets will be met. The CPUC reviews and ultimately approves the plan at least 90 days prior to a bid solicitation. Assuming the IOU is creditworthy and must meet an annual procurement target (APT) as defined by the CPUC, the IOU would commence a solicitation to procure renewables within 90 days of plan approval, consistent with its approved plan. Thus, in order to meet these two 90-day requirements, we must request these renewable procurement plans from all IOUs regardless of creditworthiness – if we wait until the IOU is creditworthy before it files an RPS procurement plan, we will be required to either approve the plan instantaneously or force the IOU to be out of compliance with the law.

The bid solicitation must offer CPUC-approved standardized contracts for a range of products, covering terms of at least ten years, unless the CPUC makes allowances for shorter terms. Bids received in response to the solicitation are to be ranked by the utility according to “least cost” and “best fit” for the IOUs’ long-term resource needs, criteria that will be defined via the implementation process outlined below.

The costs of the proposed contracts are then compared to a market price referent for each approved product, which will be determined independently of the solicitation process to avoid biasing bid results. The process for setting these referents, however, will be developed in advance of RPS solicitations as part of the RPS implementation rules, and will draw substantially from party input. Contract costs above these price referents will be covered by the Public Goods Charge (PGC), subject to availability of PGC funds, to be paid by the CEC directly to the renewable generator³. The CEC will establish processes for monitoring renewable transactions and affirming attainment of the APT, and the CPUC will establish flexible compliance and penalty mechanisms in accordance with the RPS statutes.

² We are acutely aware of the need to develop RPS compliance rules for entities such as ESPs and Community Choice Aggregators, and will begin this process soon.

³ IOUs cannot be required to enter into long-term contracts with renewable generators at prices above the CPUC-established referents. Thus, if a selected renewable bid is priced above the relevant product price referent, it will receive a supplemental revenue stream equivalent to the difference between the referent and the bid price, assuming PGC fund availability.

R.01-10-024 PVA/k47

CEC and CPUC Roles

The CPUC and the CEC each have statutorily defined roles in implementing the RPS⁴.

The CPUC's responsibilities' include:

- Establishing a process to determine market price referents, setting the criteria for IOU ranking of renewable bids by least cost and best fit, and establishing flexible compliance rules, penalty mechanisms and standard contract terms and conditions;
- Establishing initial renewable generation baselines for each IOU, making subsequent changes to these baselines as needed, and determining annual procurement targets (APTs);
- Directing the IOUs to develop procurement plans, and approving, amending or rejecting the plans;
- Making specific determinations of market price referents for products under contract;
- Approving or rejecting IOU requests to enter specific contracts for renewable power, including determining if a solicitation was adequately competitive;
- Factoring transmission and imbalance costs into the RPS process and identifying the transmission grid implications of renewable development;
- Defining rules for the participation of renewable DG, ESPs, Community Choice Aggregators, and potential Procurement Entities⁵.

⁴ Collaboration is specifically called for in the RPS legislation with the following language: 399.11 (a) "It is the intent of the Legislature that the California Public Utilities Commission and the State Energy Resources Conservation and Development Commission implement the California Renewables Portfolio Standard Program described in this article"; 399.11(d) the RPS Program "is intended to complement the Renewable Energy Program administered by the State Energy Conservation and Development Commission"; 399.13(b) "The commission shall collect data from electrical corporations and remit the data to the Energy Commission within 90 days of the request"; and 399.15(e) "The commission shall consult with the Energy Commission in calculating market prices under subdivision (c) and establishing other renewables portfolio standard policies."

⁵ The RPS statute allows for the following at Pub.Util.Code 399.14(e): "Upon application by an electrical corporation, the commission may authorize another entity to enter into contracts on behalf of customers of the electrical corporation for deliveries of eligible renewable energy resources to satisfy the annual portfolio standard obligations, subject to similar terms and conditions applicable to an electrical corporation. The commission shall allow the procurement entity to recover reasonable costs through retail rates subject to review and approval."

The CEC's responsibilities include:

- Certifying eligible renewable resources, including those generating out-of-state;
- Establishing criteria to determine "incremental" output from existing geothermal resources for eligibility to meet the annual procurement target;
- Developing and implementing an accounting system to verify compliance with the RPS;
- Allocating and awarding supplemental energy payments (funded by the Public Goods Charge) to renewable generators to cover costs above the CPUC's market price referents for energy that is procured to meet the APT.

As noted above, the RPS legislation requires collaboration on certain points, and suggests a degree of collaboration across the range of implementation issues. Collaborative staff has prepared an analysis of these points of collaboration and recommended approaches the agencies can take on an issue-specific basis, which follows here.

II. COLLABORATIVE ISSUES AND PROCESS

Collaborative staff⁶ has developed the following guidelines for apportioning responsibilities and designing this process:

Issues and Forums

Staff has allocated final decision-making authority on each identified issue to the appropriate agency and described the proposed nature of this collaboration. Final decisions are to be made at the appropriate Commission, with opportunities made available for each agency to comment with special status on each issue.

Hearings are considered appropriate in the following instances: 1) where facts are in dispute; 2) where decisions will have "substantial economic impact," defined as potential impacts on rates or inclusion and exclusion of economic actors.

Workshops are suggested for purposes of: 1) information gathering, to define concepts or to trigger hearings as needed; 2) expanding the record, and to increase party representation, beyond the January filings; 3) resolving issues from hearings that are less contentious than anticipated; 4) preparing staff and interested party reports for submission to the Commission(s) as appropriate.

⁶ The names of the CEC collaborative staff are: Marwan Masri, Timothy Tutt, Jim Hoffsis, Heather Raitt, Rasa Keanini, Tony Goncalves, and Gabriel Herrera.

Staff collaboration will take place on an ongoing basis, including the preparation of topical white papers and workshop reports and the communication of agency views between the two Commissions.

Using this methodology, and in consideration of party comments submitted via the January 6th and January 13th, 2003 filings, collaborative staff proposes the following organization and timing of issue development in the RPS implementation process.

A Three-Phased Approach to RPS Implementation

A number of parties stress in their comments the need to move quickly, and we agree. Accordingly we have attempted to group the identified RPS issues in the following three categories, organized by deciding agency and expected date of resolution between now and year's end.

The CEC collaborative staff proposes opening a new CEC proceeding to address RPS implementation issues that fall under CEC purview, in collaboration with the CPUC. The CEC collaborative staff proposes creating a reciprocal legal structure to allow CPUC collaborative staff to participate in the CEC decision making process. The CEC proceeding will address the following topics specified in SB 1078. As that proceeding is initiated, public notice will be provided explaining how members of the public may participate.

1. Early Resolution

CEC as Deciding Agency

CEC Collaborative staff proposes that the issues below be addressed through CEC decisions in an expedited timeframe. Draft decisions are typically based on the recommendations of an assigned Commission Committee, which in turn may be based on a staff proposal or white paper, any public comments received as part a workshop or hearing, and the existing record of any pertinent CEC proceedings. After the issuance of a draft decision, the full CEC Commission would consider adoption of a final decision at a regularly scheduled Business Meeting. This process is relatively expeditious and is particularly useful in resolving issues for which there is little contention or that can be resolved quickly.

Making a Determination on the Eligibility of Out-of-State Power

- Collaborative staff expects to follow up with any needed guidelines under item 2 below.

Defining Eligible Renewable Technologies

- Consideration of renewable DG will be handled separately (see below).

Making a Determination on Incremental Geothermal Generation

- The CEC plans to make a determination on what constitutes incremental geothermal generation by the end of March. Collaborative staff expects to follow up

with any needed guidelines to the Existing Renewable Resources Account under item 2 below.

CPUC as Deciding Agency

All issues to be decided by the CPUC will be addressed in the Procurement Rulemaking (R.01-10-024), in the manner described in each category.

Establishing and Adjusting Renewable Generation Baseline and Setting Annual Procurement Targets

- Collaborative staff will analyze IOU data and prepare a recommendation to the CPUC, and will coordinate baseline adjustment procedures with the CEC's resource certification process. Integration of IOU Interim renewable procurement that fits into baseline resources will be accomplished in this manner. No hearings, workshops or working groups are anticipated.

2. Resolution by Rule by June 30, 2003

CEC as Deciding Agency

Drawing on the experience of the Renewable Energy Program, the CEC collaborative staff proposes that the certification of in-state resources and the distribution of supplemental energy payments (SEPs) identified below be addressed under the CEC's authority to develop guidelines. The authority to develop guidelines to implement portions of the RPS under SB 1038 and SB 1078 is set forth in Public Utilities Code section 385.5(h)(1).

The adoption of these guidelines is exempt from the formal rulemaking requirements of the Administrative Procedures Act (APA). As a result, guidelines can be developed within months, and can be modified as necessary to adapt to developments in the market and make any other necessary adjustments in how the program is implemented. The guideline process is efficient and affords a great deal of flexibility.

Guidelines are developed through a public process, where the CEC typically releases staff or Committee draft guidelines for public comment in writing or verbally at workshops or hearings. A staff white paper, or public input from working groups could also serve as the basis of guideline development. Ultimately the guidelines, as well as any substantive revisions, must be formally adopted at a CEC Business Meeting.

Establishing Process to Certify In-State Resources

- Collaborative staff will address this issue as part of guidelines for the New and Existing Renewables Resources Accounts. This includes addressing certification of incremental geothermal, small hydro, solid waste conversion, combustion of municipal solid waste, and biomass facilities. Collaborative staff will also consider RECs, if applicable, in the certification procedures.

Establishing Guidelines for SEP Payment

- Collaborative staff will address this issue including how it applies to interim procurement as part of guidelines for the New Renewables Resources Account. Staff recommendations to the CEC will be coordinated with recommendations to the CPUC on bidding and contract evaluation rules.

Developing RPS Tracking and Verification System

- Collaborative staff will develop an interim tracking and verification system applicable to the IOU interim renewable procurement and previously existing renewable stock for consideration by CEC decision. Collaborative staff will issue a white paper for party comment in **March**, and the CEC will host joint workshops in **April**. A CEC decision on the development of these rules for long-term use will be addressed separately (see below). Collaborative staff will consider RECs, if applicable, in the tracking and verification process.

CPUC as Deciding Agency

Developing Flexible Compliance and Penalty Mechanisms

- Collaborative staff will facilitate workshops through mid-**March**, and hearing times will be reserved in advance for issues that may require further development. Initial exploration will focus on compliance and penalty provisions expressly called for in the RPS statutes; considerations relating to RECs will be addressed if applicable, potentially reserved for resolution at a later date.

Establishing Standard Contract Terms and Conditions

- A working group will be established on these issues at the February 18th PHC, with an initial working group report to be submitted on **March 3rd**. Further work planning on these issues will be undertaken as needed subsequent to March 3rd.

Determining the Market Price Referents

- Collaborative staff will issue a white paper for party comment on these issues at the end of **February**. Parties are asked to discuss at the PHC the desirability of working groups, workshops and hearings on these issues.

Defining Least Cost and Best Fit and Bid Ranking Criteria

- Collaborative staff will issue a white paper for party comment in mid-**March**, and the CPUC will hold workshops on these issues from the middle to the end of **March**. Parties are asked to discuss at the PHC the desirability of independent working groups on these issues, to be convened prior to the workshops in order to expedite the process, and to discuss the need for formal hearings on this topic.

3. Resolution by December 31, 2003

Determining Eligibility of Renewable DG (CPUC and CEC)

Ensuring Resource Diversity (CPUC and CEC)

Commencement of RPS Implementation for ESPs and CCAs (**CPUC and CEC**)
Developing Criteria to Determine Competitive Sufficiency (**CPUC and CEC**)
Planning RPS Tracking and Verification System (**CEC**)

- Development of the tracking and verification system will include consideration of the role of RECs, if applicable. The system will likely be finalized in 2004, as the rules for the system are expected to be developed through a formal rulemaking process pursuant to the APA. The formal rulemaking process takes at least seven months to complete and typically a year for relatively non-controversial regulations.

III. SCHEDULE AND WORK PRODUCT

February 18 th :	RPS PHC
April 1 st :	IOU Draft Long Term Procurement Plans filed for Comment
May 15 th :	CPUC/CEC Draft Interim Implementation Plan submitted for comment and to inform the IOU Long Term Procurement Plans
June 5 th :	Comments on Draft Interim Implementation Plan due
June 30 th :	Final Interim RPS Implementation Plan submitted
June 30 – July 25 th : (approx.)	Hearings on Procurement and RPS Implementation
August 8 th and 15 th :	Opening and Reply Briefs on Procurement and RPS Implementation
October 17 th :	Proposed Procurement and RPS Implementation Decisions
November 2003:	IOU Long Term Procurement Plans (2003) approved
December 30 2003:	CPUC & CEC reports on transmission requirements of the RPS and a statewide renewable development plan due

(END OF ATTACHMENT)

CERTIFICATE OF SERVICE

I certify that I have by mail this day served a true copy of the original attached Administrative Law Judge's Ruling Issuing Workplan and Collaboration Guidelines on all parties of record in this proceeding or their attorneys of record.

Dated February 3, 2003, at San Francisco, California.

KRIS KELLER

Kris Keller

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

The Commission's policy is to schedule hearings (meetings, workshops, etc.) in locations that are accessible to people with disabilities. To verify that a particular location is accessible, call: Calendar Clerk (415) 703-1203.

If specialized accommodations for the disabled are needed, e.g., sign language interpreters, those making the arrangements must call the Public Advisor at

R.01-10-024 PVA/k47

(415) 703-2074, TTY 1-866-836-7825 or (415) 703-5282 at least three working days in advance of the event.